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No. 81-38

In the Supreme Court of the United States

OCTOBER TERM, 1981

MARY ELLEN CRAWFORD, etc., et al.,
Petitioners,

vs.

BOARD OF EDUCATION OF THE CITY OF LOS ANGELES,
Respondents.

BUSTOP, a Corporation; BETTER EDUCATION FOR STUDENTS TODAY, an Unincorporated Association; ROBERT LOVELAND and MAY KEIPP; CHARLES DREEBIN, etc., et al.; and UNITED TEACHERS/LOS ANGELES, an Unincorporated Association,
Intervenors.

Request for Permission to File Brief *Amicus Curiae* in Support of Respondents

and

Brief *Amicus Curiae* in Support of Respondents

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TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Pursuant to Rule 36.1 of the Rules of the Supreme Court of the United States, the Citizens Legal Defense Alliance, Inc. moves this Court for permission to file a Brief *Amicus Curiae* in the above entitled case in support of the Respondents. Pursuant to Rule 36.2 of the Rules of the Supreme Court of the United States, this motion is accompanied by the written consent of all parties to this case.

The Citizens Legal Defense Alliance, Inc., a California non-profit public interest law foundation, comprised of several thousand members, being familiar with the issues involved and the scope of their presentation, believes that there is a necessity for additional argument on the questions presented herein.

Interest of *Amicus Curiae*

The interest of the Citizens Legal Defense Alliance, Inc. is twofold: first, that of protecting those of its members, as well as the general public, who are parents of students attending the schools under the jurisdiction of the Los Angeles City Board of Education (its correct designation) from the forced transportation of their children to schools distant from their homes; and, second, to uphold and preserve Article 1, Section 7(a), of the Constitution of the State of California.

Amicus Curiae believes that the Petitioners in the instant case are attempting to have the said Article declared unconstitutional, rather than electing to seek its repeal by the simple process provided by the said Constitution, itself.

The Citizens Legal Defense Alliance, Inc., respectfully requests that this Court grant it permission to file the attached Brief *Amicus Curiae*, copies of which have been served upon all parties to the case.

Dated: January 14, 1982

Respectfully submitted,

ROBERT H. FINCH, Attorney for
Citizens Legal Defense Alliance, Inc.

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Brief *Amicus Curiae* in Support of Respondents

Interest of *Amicus Curiae*

The Citizens Legal Defense Alliance, Inc. (CLDA), has a particular and special interest in the above-titled litigation, in that it is comprised of several thousand members, the vast majority of whom are citizens and taxpayers of the County of Los Angeles, State of California; the CLDA, itself, is a taxpayer in the said County, and in the Los Angeles Unified

School District, even though it is exempt from State and Federal taxes under Section 501(c)(3) of the Internal Revenue Code, and Section 23701d of the California Revenue and Taxation Code; the CLDA, including its members, are gravely concerned that Article 1, Section 7(a), of the Constitution of the State of California might be overturned against their wishes and the wishes of two-thirds of the general public, although it is in compliance with Amendment XIV of the Constitution of the United States; and, the CLDA seeks to protect all parents of students of all races from the needless transportation of their children, at times over great distances, without any compensating benefit to them, individually or collectively.

The Los Angeles Unified School District never has been segregated by any definition of that term

> "Segregation. The act or process of separation. The unconstitutional policy and practice of separating people on the basis of color, nationality, religion, etc. in housing and schooling." *Black's Law Distionary*, Fifth Edition (1979).

There is no segregation unless some force (by law, or otherwise) has been brought to bear to separate people. No such force was applied by the Los Angeles City Board of Education (its correct designation), which has jurisdiction over the Los Angeles Unified School District, at any time.

No court in California has found that the said Board acted to separate students unconstitutionally along racial lines. Although both the Superior Court and the State Supreme Court stated that the Board was guilty of so-called *"de jure"* segregation, no positive act of the Board to separate students racially was charged.

> "We emphasize that the differentiating factor between *de jure* segregation and so-called *de facto* segregation to which we referred in *Swann* is *purpose* or *intent* to segregate." *Keyes v. School District No. 1*, 413 U.S. 189, 208 (1973).

Thus, by this Court's own definition, there must be a purpose or intent to segregate, which agrees, in essence, with the definition given in *Black*. It has never been held that the Board has demonstrated any purpose or intent to segregate its students.

Compulsory Busing Imposes a Burden of Remedial Action Upon Those Innocent of Any Wrongdoing

> "The compulsory transportation of students carries a further infirmity of a constitutional remedy. With most constitutional violations, the major burden of remedial action falls on offending state officials. Public officials who act to infringe personal rights of speech, voting, or religious exercise, for example, are obliged to cease the offending act or practice and, where necessary, institute corrective measures. It is they who bear the brunt of remedial action, though other citizens will to varying degrees feel its effects. School authorities responsible for segregation must, at the very minimum, discontinue segregative acts. But when the obligation further extends to the transportation of students, the full burden of affirmative remedial action is borne by children and parents who did not participate in any constitutional violation." *Keyes, supra*, at 250. Opinion of Justice Powell, concurring in part and dissenting in part.

If, as Mr. Justice Powell states, busing places an unfair burden on students and parents, even where a dual school system exists, how much more unfair is it to impose such a burden where no state action has occurred to create a racial imbalance.

Of the 555 schools in the Los Angeles Unified School District, only seven were populated by students of a single race; all other schools had some racial mixture. It would be stretching the meaningful use of language to hold that the District is segregated.

The true description of a segregated school district was this:

> "In each instance, they [black children] have been

denied admission to schools attended by white children under laws requiring or permitting segregation according to race." *Brown v. Board of Education*, 347 U.S. 483, 487, 488 (1954).

A school in which there exists a racial mixture depending only on the racial balance of the neighborhood in which it is located, cannot be classified as segregated.

A Provision of a State Constitution That Conforms to a Provision of the Constitution of the United States Cannot Be Called Unconstitutional

The clause in question of the Constitution of California, as it applies to this case, is Article 1, Section 7(a). It reads:

> "[N]othing contained herein or elsewhere in this Constitution imposes upon the State of California or any public entity, board, or official any obligations or responsibilities which exceed those imposed by the Equal Protection Clause of the 14th Amendment to the United States Constitution with respect to the use of pupil assignment or pupil transportation. In enforcing this subdivision . . . no court of this state may impose upon . . . any . . . board, or official, any obligation or responsibility with respect to the use of pupil school assignment or pupil transportation."

Exceptions to the above are (1) to remedy a specific violation that would also be a violation of the Fourteenth Amendment, and (2) unless a Federal Court would find such a violation and, therefore, impose the remedy of busing.

No acusation of a violation of the Constitution of the United States by Article 1, Section 7(a), of the Constitution of California can have any standing in law or in fact, since both the State and Federal Constitutions are in agreement on the point at issue herein.

The Amendment of the Constitution of California Has Opened the Way for the Supreme Court of the United States to Acquire Jurisdiction in this Matter

The trial court (Judge Gitelson) and the California Supreme Court avoided any reliance upon the Fourteenth Amendment, basing their decisions solely on the California Constitution. For that reason, since no Federal issue was raised, no appeal to the Federal Courts could be taken.

However, under the amended Article 1, Section 7(a), this Court now has jurisdiction, and previous rulings of this Court should prevail. This Court has never held that a simple and blameless racial imbalance is an actionable violation of civil rights.

Quotas May Not Be Used to Determine the Degree of Integration Required in Schools

In its 1976 decision in *Crawford v. Board of Education*, 17 Cal. 3d 290, the California Supreme Court held:

> "While we affirm the trial court's order requiring the defendant board to prepare and implement a reasonably feasible desegregation plan, we shall point out that one portion of the judgment, defining "segregated" schools in terms of specific racial and ethnic percentages, is in error and must be modified on remand."

In spite of this clear ruling, Judge Egly (successor to Judge Gitelson in the case) has inserted a quota system into his integration plan. In his "Intended Order," dated May 19, 1980, Judge Egly gave his "Definition of a Desegregated School." He stated:

> "As discussed earlier in this order, it is the court's intention to adopt as a working definition of a desegregated school containing only two racial/ethnic groups, one with a simple majority of white students, plus or minus 10%. In those areas where there are sufficient numbers of minority groups and the practicalities of the situation make it reasonable and feasible, the court intends to adopt a definition of a multiethnic desegregated school which would require a plurality of white children, plus or minus 5%, over the largest of any of the minority groups present. The white complement in a desegre-

gated school may not exceed 10% more than a majority in a biethnic school or 5% more than a plurality in a multiethnic school." Text published by *Los Angeles Daily Journal*, at 72.

Receiving the case on remand from the California Supreme Court, with its ban on the use of racial and ethnic quotas in desegregating the Los Angeles schools, Judge Egly had, notwithstanding, proceeded to adopt such quotas. And, even as he set his quotas, he admitted that the student population of the district was: white, 27%; black, 24.1%; Hispanic, 41.8%; and Asian, 6.7%. (Ibid., p. 57). It is mathematically impossible to have a majority, or even a plurality, of white students in schools in which 73% of the student population is made up of so-called "minorities."

In any event, the rule in *Bakke* prohibits any use of quotas:

> "For this reason, so much of the California court's judgement holding petitioner's special admissions program [based on quotas] invalid under the Fourteenth Amendment must be affirmed." *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).

Conclusion

For the reasons set forth in this Brief *Amicus Curiae*, the Citizens Legal Defense Alliance, Inc., respectfully requests that this Court find in favor of the Respondent Board of Education of the City of Los Angeles, and deny the Petitioner's appeal.

Dated:
January 14, 1982

Respectfully submitted,

Robert H. Finch, Attorney for
Citizens Legal Defense Alliance, Inc.